

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

JALEES MUZIKIR,	)	
	)	<b>CZ</b>
Petitioner,	)	
	)	
v.	)	Docket No. 335-19.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	
	)	

**ORDER AND DECISION**

Purportedly, this is an action for redetermination commenced by petitioner in respect of a notice of deficiency. Pending before the Court is respondent's Motion For Judgment On The Pleadings, filed May 22, 2019, pursuant to Rule 120.<sup>1</sup> Petitioner filed an Objection to the granting of respondent's motion on June 19, 2019.

**Background**

Petitioner resided in the State of Maryland at the time that the petition was timely filed with the Court.

By notice dated October 24, 2018, respondent determined a deficiency in petitioner's Federal income tax for 2015 of \$22,008.00, together with an accuracy-related penalty under section 6662(a) of \$2,300.80. The deficiency in income tax

---

<sup>1</sup> All Rule references are to the Tax Court Rules of Practice and Procedure. All section references are to the Internal Revenue Code of 1986, as amended.

is based on a single adjustment to income, namely, unreported wages of \$142,281.<sup>2</sup> The accuracy-related penalty is based on a substantial understatement of tax liability and/or negligence or disregard of rules or regulations.

Petitioner purportedly filed a petition for redetermination with this Court in respect of the October 24, 2018 notice of deficiency, as a copy of which notice was attached to the petition as an exhibit. Significantly, in the petition, petitioner does not assign error nor allege facts in respect of the income determination made by respondent in the notice of deficiency. In particular, petitioner does not deny the receipt of wages, nor does petitioner allege the receipt of wages in any amount less than that determined by respondent in the notice of deficiency. See Parker v. Commissioner, 117 F.3d 785 (5th Cir. 1997); White v. Commissioner, T.C. Memo. 1997-459. Further, in the petition, petitioner does not challenge the accuracy-related penalty by, for example, alleging any recognized defense that might obviate the applicability of such penalty.

Rather, in the petition, petitioner argues only that because of the dismissal of a prior case, “[t]he IRS has no jurisdiction over the Petitioner for tax year 2015 \* \* \* [because of] Internal Revenue Code (IRC) section 7481, the ‘Tax Court Judgment Finality Rule.’” Such prior case, at dkt. No. 3746-18, was a case in which petitioner alleged in a petition filed February 21, 2018, that he had received neither a notice of deficiency nor a notice of determination for any of the taxable years 2007 through 2017.<sup>3</sup> In response to such petition, the Commissioner filed on April 18, 2018, a motion to dismiss for lack of jurisdiction, alleging (inter alia) that respondent had not sent petitioner a notice of deficiency for 2015. Notwithstanding the fact that the Court directed petitioner to file a response to the

---

<sup>2</sup> Notably, respondent has credited petitioner for the \$10,504 amount withheld from wages insofar as petitioner’s ultimate tax liability is concerned. However, the determination of a statutory deficiency does not take such withheld amount into account. See sec. 6211(b)(1).

<sup>3</sup> Such a petition, commonly known as a “years petition”, does nothing other than allege that for a substantial number of consecutive taxable years the taxpayer did not receive any jurisdictionally-relevant IRS notice, such as a notice of deficiency or a notice of determination, that would permit an appeal to the Tax Court. A “years petition” is a manifestation of protest from tax deniers and tax protestors.

Commissioner's motion, petitioner failed to do so.<sup>4</sup> On June 1, 2018, the Court entered and served an Order of Dismissal for Lack of Jurisdiction. Petitioner neither moved to vacate nor appealed, and the dismissal order in the case at dkt. No. 3746-18 became final in due course.

Returning now to the present case, it bears mention that petitioner did not pay the filing fee when he filed his petition, nor did he file at that time an affidavit or declaration containing specific financial information regarding the inability to pay the filing fee. By Order dated February 6, 2019, the Court directed petitioner to pay the filing fee or to submit an application for waiver on or before March 25, 2019. Petitioner did not comply with this Order.<sup>5</sup>

As previously stated, respondent filed a Motion For Judgment On The Pleadings on May 22, 2019. Two days later petitioner filed a Motion For Summary Judgment, in which he reprised the allegations previously made in the petition. The Court summarily denied petitioner's motion on May 29, 2019.

On June 19, 2019, petitioner filed an Objection to respondent's May 22, 2019 Motion For Judgment On The Pleadings. Again, petitioner reprised the allegations previously made in the petition.

### Discussion

The Court may grant judgment on the pleadings where the pleadings do not raise a genuine issue of material fact and a decision may be rendered as a matter of law. Rule 120(a); Nis Family Trust v. Commissioner, 115 T.C. 523, 537 (2000).

---

<sup>4</sup> Also in his case at dkt. No. 3746-18, petitioner failed to pay the filing fee or submit a fee waiver application. As will be discussed in the text, infra, petitioner similarly failed to do so in the present case.

<sup>5</sup> The February 6, 2019 Order expressly warned petitioner that failure to pay the filing fee or to submit an application for fee waiver on or before March 25, 2019, might result in dismissal of this case. Given petitioner's failure to comply with the February 6, 2019 Order, the Court could dismiss this case on its own motion on that basis and declare respondent's Motion For Judgment On The Pleadings to be moot. However, the Court chooses to address respondent's motion and regards petitioner's failure to comply with the February 6, 2019 Order as an alternative basis for dismissal.

“A judgment on the pleadings is a judgment based solely on the allegations and information in the pleadings and not on any outside matters.” Nis Family Trust v. Commissioner, 115 T.C. at 537; see also Rule 120(a) and (b). The movant has the burden of showing entitlement to judgment on the pleadings. Abrams v. Commissioner, 82 T.C. 403, 408 (1984).

Rule 34(b)(4) requires that a petition filed in this Court contain clear and concise assignments of each and every error that the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiency and the penalty in dispute. See Gordon v. Commissioner, 73 T.C. 736, 739 (1980). Rule 34(b)(5) further requires that the petition contain clear and concise lettered statements of the facts on which the taxpayer bases the assignments of error. See Jarvis v. Commissioner, 78 T.C. 646, 658 (1982). Any issue not raised in the assignments of error is deemed to be conceded. Rule 34(b)(4); Jarvis v. Commissioner, 78 T.C. at 658 n.19; Gordon v. Commissioner, 73 T.C. 736 (1980).

Notably, in the petition, petitioner does not assign error or allege facts in respect of the income determination of unreported wages of \$142,281 made by respondent in the notice of deficiency. In particular, petitioner does not deny the receipt of wages, nor does petitioner allege the receipt of wages in any amount less than the \$142,281 amount determined by respondent in the notice of deficiency. See generally Parker v. Commissioner, 117 F.3d 785 (5th Cir. 1997); White v. Commissioner, T.C. Memo. 1997-459. Rather, petitioner has merely alleged that the dismissal of his prior case at dkt. No. 3746-18 based on the fact that respondent had not issued a notice of deficiency for 2015 is conclusive. But that allegation overlooks (1) the fact that the dismissal of the case at dkt. No. 3746-18 was jurisdictionally-based, i.e., no notice of deficiency for 2015 had then been issued and (2) the further fact that a notice of deficiency for 2015 was issued after the dismissal of the case at dkt. No. 3746-18.

Further, in the petition, petitioner does not challenge the accuracy-related penalty by, for example, alleging any recognized defense that might obviate the applicability of such penalty. Thus, absence a justiciable claim with respect to the penalty, petitioner is deemed to have conceded that matter. Rule 34(b)(4); Funk v. Commissioner, 123 T.C. 213, 217-218 (2004); Swain v. Commissioner, 118 T.C. 358, 364-365 (2002); Jarvis v. Commissioner, 78 T.C. at 658 n.19; see Parker v. Commissioner, 117 F.3d 785, 787 (5<sup>th</sup> Cir. 1997).

Conclusion

In sum, giving due regard to the statements contained in respondent's motion, and further giving petitioner not only the benefit of every doubt as the Court is required to do at this stage of the proceeding, see Hicks v. Small, 69 F.3d 967, 969 (9th Cir. 1995), but wide pleading latitude as a pro se litigant, see Estelle v. Gamble, 429 U.S. 97, 106 (1976), the Court concludes that the petition in this case fails to raise any justiciable issue and that respondent, having previously filed an answer and then moved for judgment on the pleadings, is entitled to judgment on the pleadings. Accordingly, it is hereby

ORDERED that respondent's Motion For Judgment On The Pleadings, filed May 22, 2019, is granted. It is further

ORDERED AND DECIDED that, without regard to the prepayment credit of \$10,504 for withheld income tax, see sec. 6211(b)(1), there is a deficiency in, and an accuracy-related penalty on, petitioner's income tax for 2015 of \$22,008.00 and \$2,300.80, respectively.

**(Signed) Robert N. Armen**  
**Special Trial Judge**

Entered: **JUL 30 2019**